



Report to Cabinet

Subject Freedom of Information Act
Date 3rd March 2005
Author Head of Legal and Democratic Services

The Freedom of Information Working Group has identified a procedure for dealing with requests received under the Freedom of Information Act and a complaints procedure. This is attached at Appendix 1.

Members are asked to:

1. Approve the Freedom of Information Compliance Procedure
2. Authorise the Head of Legal and Democratic Services to take the decisions identified in the Procedure.

Gedling Borough Council

Freedom of Information Process

1. Initial receipt of request

Any employee of the Council may receive a request for information at any point across the Council.

(Requests for Environmental information need not be in writing.)

Is it part of my normal day-to-day job?

If the request is for information that officers are used to giving out and does not refer to the Freedom of Information Act 2000 (FOIA) and has been dealt with as a normal enquiry in the past, officers should continue with this practise and deal with the request without reference to this process.

Examples of this would be:

A request for a leaflet from a member of the public or organisation

Or

An enquiry about refuse collection times

If however, an officer thinks that they have received a request for information, which could be a Data Protection Act Subject Access Request, a Freedom of Information Request or an Environmental Information Regulations Request or they are unsure, the officer should pass the request to their Departmental Representative immediately upon receipt.

There should be no delay as the Council has only 20 Working days after receipt to confirm the information is held by the Council, find the information and if the Council holds the information to send it to the person or organisation making the request.

2. Receipt by FOI Departmental Representative

As soon as a Departmental Representative has received a request for information they must log the request into the Corporate FOI/DPA/EIR recording system completing all the fields required in that system.

If the Departmental Representative is unclear about the information being requested or the request is incomplete or vague they should contact the individual, company or organisation making the request by the quickest means available e.g. telephone,

email or letter to clarify the request or to help the person making the request identify exactly what information they are expecting to receive.

The Council is not entitled to ask why a request is being made and this line of enquiry should be avoided.

If an officer needs to seek clarification or offer advice or assistance to the person or organisation making the request then they should act as quickly and efficiently as possible. A Departmental Representative should enter any available information into the corporate recording system.

At this point in time the Departmental Representative should estimate the costs involved in locating and collating the information (on a calculation of £25 per hour) and if in excess of £450 a fee notice should be issued requesting the fee.

If the amount of any charge would be less than £450, the calculation needs to be recorded and the entry on the recording system will default to zero.

If the request is straightforward and can be satisfied by the receiving department then the Departmental Representative should proceed to organise the request within their department ensuring at all times that the request is dealt with in a timely manner complying with the Statutory time limit of 20 working days after receipt.

Once the information has been sent out to the person or organisation making the request then the Departmental Representative shall enter this information on the recording system to confirm that the request has been dealt with in full.

If a Departmental Representative is uncertain about how to proceed at any point or requires advice or assistance then they should contact the Legal Department immediately.

3. Complex Requests

It is envisaged that a complex request will be one involving any of the following considerations:

- Involves more than one department
- Vexatious or repeated requests
- Fees in excess of £450
- Internal or external consultation
- The application of exemptions under the Freedom of Information Act 2000

If a Departmental Representative receives a request, which is complex by virtue of any of the above, then they should enter the request into the recording system and notify the Legal Department of receipt of such a request making clear why this request is considered complex. The receiving Departmental Representative should then proceed to find any relevant information from within their department without waiting for further instruction or advice unless it is suspected that this may be a

vexatious or repeated request. This point should be verified immediately with the Legal Department.

Once notification has been given to the Legal Department by a Departmental Representative that a complex request has been received the Head of Legal and Democratic Services will determine how the request will be handled addressing the area of complexity and ensuring that a corporate response can be formulated within the required time-scale.

If a request involves information, which needs to be collated from more than one department of the Council, the Legal Department will notify all relevant departments of the request and in due course the Legal Department will collate the information received from all sources. The Departmental Representatives will be the point of contact for all departments in dealing with requests.

All departments involved in answering complex requests must forward all relevant information to the Legal Department as soon as practicable, but if the information will not be available for the Legal Department to collate within ten working days of the request having initially been received at the Council, the Legal Department must be notified by the Departmental Representative as soon as this becomes apparent and a deadline agreed to enable the Council to comply with its statutory time limits.

If a request is complex it may involve the application of exemptions and following the application of exemptions the consideration of where the public interest lies. The Council should aim to make all these decisions within 20 working days.

Vexatious or Repeated Requests

In complex cases where there is the possibility that the request might be considered “vexatious” or “repeated” this should be determined in the first instance and referred to the Head of Legal and Democratic Services for a decision

If a complex request is unclear and involves a large amount of information where the fees limit of £450 could be exceeded, the Head of Legal and Democratic Services will, after consultation with the various Departmental Representatives, enter into a dialogue or correspondence with the applicant to establish what information is being requested and if necessary agree a fee. Where a significant fee in excess of £450 is payable this must be charged to the applicant and paid by the applicant before the Council undertakes any substantial work in accordance with the Council’s Charging Policy.

Consultation

If either internal or external consultation is required to establish whether individuals or organisations will be prejudiced by the release of information and what if any information should be redacted to avoid such prejudice, then these consultations will be undertaken by the Head of Legal and Democratic Services. Obtaining consent from third parties for the release of information will form part of this consultation process.

Exemptions and Public Interest Test

In each case the Head of Legal and Democratic Services or Chief Executive where appropriate will take the necessary decision on the application of exemptions followed by application of the Public Interest Test where applicable.

Refusal

Any decision to refuse to release information will also be taken by the Head of Legal and Democratic Services. Refusal will be communicated formally stating the reasons for refusal and informing the Applicant of their right to complain using the Council's Information Requests Complaints Procedure set out below and subsequently by appeal to the Information Commissioner.

Released Information

Any information released should be recorded by the department releasing the information and considered for addition to the Council's publication Scheme which will be reviewed in 2005/2006.

Complaints

The Council will have a separate Information Requests Complaints Procedure. Each Applicant will be informed in the letter sending out the response to their request that if they are not satisfied with how their request has been dealt with then they should complain by writing to the Chief Executive. The Chief Executive or the Deputy Chief Executive in his absence or where there is a conflict, will then review the decision, which is the subject of the complaint. The Chief Executive or Deputy Chief Executive will either confirm, reverse or amend the decision, which has been taken.

The target for dealing with complaints is ten working days from receipt of the written complaint. A complaint will be acknowledged within two working days and the Applicant informed of the Council's target date for determining the complaint. Where it is apparent that determination of the complaint will take longer than the target time the Council will inform the Applicant and explain the reason for the delay.

Where the outcome of the complaint is that information should be disclosed which was previously withheld the information in question will be disclosed as soon as practicable and the Applicant informed how soon this will be.

Where the outcome of the complaint is that the initial decision to withhold information is upheld or is otherwise in the Council's favour the Applicant will be informed of his right to apply to the Information Commissioner and be given details of how to make an application.